

Section 5

Consistency with Laws, Procedures and Policies

5.1 Overview

An assumption process is governed by a number of State statutes and must meet Boundary Review Board (BRB) criteria and objectives, countywide planning policies and local policies. This section will provide a summary of those laws, procedures, policies and objectives.

5.2 State Statutes

Assumption of water and/or wastewater districts by cities is authorized and governed by RCW 35.13A. The approval of an assumption is delegated to the local BRB under RCW 36.93. In addition, the action must be consistent with the Growth Management Act, RCW 36.70A and comply with the State Environmental Policy Act, RCW 43.21C. These and other State statutes can be accessed on the state legislature web site, www.leg.wa.gov/RCW/.

It should be noted that on November 18, 2003, the City Council approved Ordinance 120 to:

“exercise all authority pursuant to RCW Chapter 35.13A providing for the assumption by the City of Liberty Lake of the Liberty Lake Sewer and Water District, No. 1. The City shall acquire all District property and assume responsibility for provisions of services, maintenance and operations of facilities, allocation of cost, financing, and other related matters, all as set forth in RCW Chapter 35.13A.” Section 9, Administrative Authority, states, “The City Council hereby confers upon the Mayor and designee the authority to perform all acts, including but not limited to the filing of permits, applications and requests reasonably required to accomplish the matters set forth herein, Chapter 35.13A RCW, and all other applicable laws.”

On December 4, 2003, the District filed lawsuit against the City and key city staff. The lawsuit identified a number of action items including:

- to stay the City from taking further steps to effectuate assumption,
- to declare Ordinance 120 invalid,
- to find that the City has no authority to proceed under Chapter 35.13A RCW until it submits its utility decision to the voters,
- to require the City to take steps under SEPA before considering such an ordinance.

On September 10, 2004, a court decision affirmed the District’s lawsuit on the majority of the above procedural issues related to Ordinance 120. However, the City’s intent to pursue assumption and their objectives for this effort are still intact and is addressed by this report. Any further references to Ordinance 120 herein are made not to rely on the legality of that ordinance

but as a point of reference to the sequence of events in developing this report. The legal procedures to implement an assumption strategy are not the subject of this report.

5.2.1 RCW 35.13A, Water or Sewer Districts – Assumption of Jurisdiction

This is the most pertinent statute regarding assumptions. A copy of the full chapter is in the Appendix G. Appropriate sections have been quoted in various locations in the Study. The following are key provisions.

RCW 35.13A.030 states:

“Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the assessed valuation of the real property lying within such district, is included within the corporate boundaries of a city, the city may assume by ordinance the full and complete management and control of that portion of the entire district not included within another city, whereupon the provisions of RCW 35.13A.020 shall be operative; or the city may proceed directly under the provisions of RCW 35.13A.050.”

RCW 35.13A.020 includes provisions for assumption of a district where all of a district is included within the corporate boundaries of a city, plus responsibility for district indebtedness. RCW 35.13A.050 provides for the assumption of only the portions of the district lying within the city boundaries, leaving the remainder of the district reduced but intact. That option is discussed in this Study under the Partial Assumption Option.

Response. The City adopted Ordinance No. 120 on November 18, 2003, stating its intentions, “to exercise all authority pursuant to RCW Chapter

Both of the fundamental criteria for Assumption have been met.

35.13A providing for the assumption by the City of Liberty Lake of the Liberty Lake Sewer and Water District No. 1.” A letter from the Spokane County Assessor’s Office, dated April 2, 2004 states that 78% of the taxable assessed valuation of properties in the District is within the corporate boundaries of the City of Liberty Lake. Further, approximately 76% of the Districts current area is within the City limits. Both of the fundamental criteria for Assumption have been met.

5.2.2 RCW 36.70A, Growth Management Act

The Growth Management Act (GMA) policies provide support for assumptions in the following key sections.

RCW 36.70A.110, entitled “Comprehensive plans – urban growth areas,” states in (4):

“In general, cities are the units of local government most appropriate to provide urban governmental services.”

RCW 37.70A.210, entitled “County-wide planning policies,” states in (1),

“The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas.”

RCW 36.70A.030, entitled “Definitions,” states in (19),

“Urban governmental services” or “urban services” include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.”

Other provisions of the GMA regarding county and local planning requirements must also be complied with.

Response. The City’s Ordinance 120 and the assumption of the District are consistent with the Growth Management Act. Assumption would enable the City to accomplish the goals of the GMA whereas the District retains some control and responsibility under the status quo and partial assumption options.

5.2.3 RCW 36.93, Local Government Organization – Boundaries – Review Boards

This Chapter primarily provides for oversight and approval, modification or denial of incorporations of new cities or annexations to existing cities as well as special purpose districts by local Boundary Review Boards (BRB) in most counties of the state, including Spokane County. The local BRB has jurisdiction over city assumptions of districts and their approval is required. The statute governs the makeup and procedures for the BRB.

The City must file a Notice of Intention with the local BRB that they intend to assume jurisdiction over the District. The BRB then has 45 days to “invoke jurisdiction,” meaning they would take control of the process. The District or the City could ask the BRB to invoke jurisdiction for presentations before the BRB. If jurisdiction is invoked, the BRB must hold a public hearing on the Notice of Intention within 120 days, after which the BRB must make a decision to approve, modify or deny the City’s application. If jurisdiction is not invoked within 45 days, the application is deemed approved administratively. Contested assumptions include the full public hearing process and mutually agreed assumptions usually go through the short, administrative process. The decision by the BRB to approve or deny can be appealed to the Superior Court and a Superior Court decision can be appealed to the Supreme Court by the losing party.

RCW 36.93.170 Factors to be considered by board -- Incorporation proceedings exempt from state environmental policy act

The statute governing proceedings of the BRB require that: the Board’s decision takes the following factors, as well as other statutes and goals into consideration. These factors primarily apply to incorporations of or annexations to cities and districts but also must be

considered for assumptions. Not all factors must be met for an assumption proposal to be approved.

“In reaching a decision on a proposal or an alternative, the board shall consider the factors affecting such proposal, which shall include, but not be limited to the following:”

“(1) Population and territory; population density; land area and land uses; comprehensive plans and zoning, as adopted under chapter 35.63, 35A.63, or 36.70 RCW; comprehensive plans and development regulations adopted under chapter 36.70A RCW; applicable service agreements entered into under chapter 36.115 or 39.34 RCW; applicable interlocal annexation agreements between a county and its cities; per capita assessed valuation; topography, natural boundaries and drainage basins, proximity to other populated areas; the existence and preservation of prime agricultural soils and productive agricultural uses; the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years; location and most desirable future location of community facilities;”

Response. The City’s adopted Comprehensive Plan directly addresses these issues which are under the City’s jurisdiction and control. The City contains most of the Urban Growth Area in the immediate region while most of the District service area outside of the City limits is also outside of the UGA. No other cities or service providers except the Liberty Lake Sewer and Water District are affected.

It is important to note that a full evaluation of these factors was conducted previously which led to incorporation of the City of Liberty Lake. One of the many issues considered was a study conducted by Financial Consulting Solutions Group that deemed the City financially viable to assume full responsibilities of City governance.

“(2) Municipal services; need for municipal services; effect of ordinances, governmental codes, regulations and resolutions on existing uses; present cost and adequacy of governmental services and controls in area; prospects of governmental services from other sources; probable future needs for such services and controls; probable effect of proposal or alternative on cost and adequacy of services and controls in area and adjacent area; the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and”

Response. The City controls all municipal services within its boundaries except for water and wastewater service. The assumption would consolidate all municipal services, including water and wastewater service, within the City and reduce some duplication and costs. Service transition from the District to the City would be seamless because it would be performed by the same staff after assumption as before. All District financial assets and liabilities would be assumed by the City. The City has greater financial authority and resources than the District which provides an opportunity for the City to meet all these factors as well as or better than the District.

“(3) The effect of the proposal or alternative on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.”

Response. No other cities or service districts would be affected by assumption. Assumption would simplify the local governmental structure by eliminating a separate layer of government. However, the service agreement commitments between the District and the Eastside Liberty Lake Improvement Club would be honored and reimbursement for services would be predicated on cost-based charges.

“(4) The provisions of chapter 43.21C RCW, State Environmental Policy, shall not apply to incorporation proceedings covered by chapter 35.02 RCW.”

Response. Does not apply.

RCW 36.93.180 Objectives of boundary review board

The Board’s decision must take the following objectives, as well as other statutes and goals into consideration. These objectives primarily apply to incorporations of or annexations to cities and districts but also must be considered for assumptions. Not all of the objectives shown below must be met for a proposal to be approved.

These objectives primarily apply to incorporations of or annexations to cities and districts but also must be considered for assumptions. Not all of the objectives shown below must be met for a proposal to be approved.

“The decisions of the boundary review board shall attempt to achieve the following objectives.”

“(1) Preservation of natural neighborhoods and communities;”

Response. Approximately 75% of the population of the Liberty Lake community resides within the City limits. The concerns of the “natural neighborhood and community” around Liberty Lake are being addressed by the City and the policies accompanying the assumption. Representation is being afforded for the citizens outside the City limits regarding utility services, rates and policies by the City’s formation of a Utility Advisory Committee. Further, the City’s policy has made clear its commitment to maintain a credible lake management program for water quality and flood management of Liberty Lake.

“(2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;”

Response. The boundaries of the Assumption pertain to the entire service area of the District. In fact, the boundaries formed by Sprague Avenue may appropriately differentiate between rural and urban areas, but are unnecessary for the provision of wastewater, water, stormwater, and lake management services offered by the City. The service area boundaries utilize Liberty Lake, the Spokane River and the Urban Growth Area boundaries to the extent possible. The District pre-dated the Growth Management

Act and the creation of the Urban Growth Area boundaries so its service area includes areas outside of the UGA.

“(3) Creation and preservation of logical service areas;”

Response. Assumption will consolidate the District’s corporate limits with the rest of the current and future City boundaries. Approximately 76% of the District lies within the City limits. Furthermore, projections of growth by the District’s Comprehensive Wastewater and Water Plans, along with the City’s Comprehensive Plan, predict that future growth will occur primarily within the City limits

“(4) Prevention of abnormally irregular boundaries;”

Response. No abnormal or irregular boundaries would be created by assumption. See the response for item (3).

“(5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;”

Response. Does not apply. Further incorporation activities are not anticipated. Assumption would eliminate an overlapping layer of government in the incorporated areas and reduce the number of jurisdictions in the area by one.

“(6) Dissolution of inactive special purpose districts;”

Response. Does not apply. The District is not inactive.

“(7) Adjustment of impractical boundaries;”

Response. See response to items (2) and (3).

“(8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and”

Response. Nothing proposed in the Assumption is intended to change the current designations of urban and rural lands. The City limits correspond to the Urban Growth Area. The levels of service will continue to be consistent with the character and density of land as designated in the City and County Comprehensive Plans.

“(9) Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority”

Response. Areas of interest to this topic are located outside of the Urban Growth Area, outside of the City limits, and are protected by the Spokane County Comprehensive Plan. As such, they are not affected by an Assumption.

5.3 Countywide Planning Policies

The Growth Management Act requires counties to develop and adopt countywide planning policies to establish the framework for local cities' own comprehensive plans. The Boundary Review Board approval must also be consistent with these policies. The Countywide Planning Policies for Spokane County are available on the County's website. They address Urban Growth Areas (UGAs); Joint Planning within UGAs; Promotion of Contiguous and Orderly Development and Provision of Urban Services; Parks and Open Space; Transportation; Siting of Capital Facilities of a Countywide or Statewide Nature; Affordable Housing; Economic Development; Fiscal Impacts; and a Glossary of Countywide Planning Policy Terms.

All of the following references regarding "jurisdictions" apply to the local city, in this case the City of Liberty Lake. The City is delegated the authority and responsibility for providing urban governmental services and public facilities necessary to meet the requirements within the Urban Growth Area. The City may do that through its own organization or, as stated in item #10 below, the service may be provided by a special purpose district through an interlocal agreement. The primary responsibility will still remain with the City. The City also has authority over all land use planning, zoning and permitting in order to implement and enforce the GMA requirements. Having the District provide some of the necessary urban governmental services further complicates and diminishes the City's ability to meet its responsibilities. Assumption would enable the City to better manage, control, and perform its responsibilities under the GMA and the Countywide Planning Policies in a unified, holistic manner.

The most relevant Policy statements are the ones regarding Promotion of Contiguous and Orderly Development and Provision of Urban Services. The key issues are covered by policies 1, 10, 13, 14, and 20 as discussed below:

5.3.1 County-Wide Planning Policies

- “1. Each jurisdiction shall include policies in its comprehensive plan to address how urban development will be managed to promote efficiency in the use of land and the provision of urban governmental services and public facilities. Local jurisdictions may choose higher standards. In its comprehensive plan, each jurisdiction shall include, but not be limited to, level of service standards for:
 - a. fire protection;
 - b. police protection;
 - c. parks and recreation;
 - d. libraries;
 - e. public sewer;
 - f. public water;
 - g. solid waste disposal and recycling;
 - h. transportation; and
 - i. schools.”

Response. The City's adopted Comprehensive Plan addresses all of these Policies. Assumption of the District is consistent with the City's Comprehensive Plan.

“10. Each jurisdiction shall enter into agreements with special purpose districts within its Urban Growth Area (UGA) to address the provision of urban governmental services and public facilities. Interlocal agreements between jurisdictions and special purpose districts relating to the provision of urban governmental services and public facilities shall address fiscal impacts and ensure that services provided by special purpose districts outside of the UGAs are not degraded.”

Response. No interlocal agreement was provided that addresses these concerns. Assumption eliminates the need for such an agreement. As stated in adopted policies, the City is committed to not degrade wastewater, water, or stormwater, services to the area outside of the UGA and to maintain the water quality of Liberty Lake.

“13. The Steering Committee shall oversee the development of a management plan for wastewater treatment, which includes:

- a. an inventory of the region’s existing wastewater treatment capacity;
- b. an analysis of regional wastewater treatment needs; and
- c. an analysis of regional wastewater treatment alternatives, including implementation of reduction techniques.”

Response. Regional discussions regarding the location, size and discharge requirements for wastewater treatment are on-going, including Federal, State, County, and local jurisdictions. The City would assume the District’s role and responsibility in regional planning for wastewater treatment. Adopted City policies emphasize its intent to seek solutions that best benefit utility customers, the region, and the Spokane River.

“14. Wellhead protection plans should be coordinated with water purveyors and implemented by local jurisdictions. The Steering Committee shall pursue strategies for regional (to include Idaho jurisdictions) water resource management which sustain projected growth rates and protect the environment.”

Response. The City would assume the District’s role, responsibility, and active participation in the Spokane Joint Aquifer Board activities related to individual utility and regional wellhead protection plans and regional water resource management.

“20. Each jurisdiction shall plan for growth within Urban Growth Areas (UGAs) which uses land efficiently, adds certainty to capital facilities planning and allows timely and coordinated extension of urban governmental services, public facilities and utilities for new development. Each jurisdiction shall identify intermediate growth areas (6- to 10-year increments) within its UGA or establish policies which direct growth consistent with land use and capital facility plans.”

Response. All planning for growth within the UGA is under the control of the City of Liberty Lake and has been addressed in its adopted Comprehensive Plan. Assumption would enable the City to coordinate the goals, objectives, and planning criteria within its City limits and throughout the rural area outside the UGA.

5.4 City Comprehensive Plan

In compliance with the State Growth Management Act and the Spokane County Countywide Planning Policies, the City must and has addressed the provision of urban governmental services in its own Comprehensive Plan. The City formally adopted its Comprehensive Plan on September 30, 2003. In its Comprehensive Plan, Chapter 6 – Utilities, B. History and Background, it states,

“Public sewer and water are currently provided to the majority of the City by the Liberty Lake Sewer and Water District. It is anticipated that sewer and water will become municipal City services as allowed by state law under RCW 35.13A, within the 20-year planning window.”

Further, under Future Needs Analysis, it states,

“It is anticipated that public sewer and water, which are currently provided to the majority of the City by the Liberty Lake Sewer and Water District, will become municipal City services as allowed by state law under RCW 35.13A, within the 20-year planning window. Services will be maintained at or above existing standards.”

Other chapters of the City Comprehensive Plan address water quality, critical areas, wetlands, aquifer recharge areas and groundwater, surface water quantity and quality and other related environmental concerns. The Plan also addresses the Regional Minimum Level of Service, including domestic water, sanitary sewer and stormwater.

Response. Consistent with these policies, the City adopted Ordinance No. 120 on November 18, 2003, stating its intentions, *“to exercise all authority pursuant to RCW Chapter 35.13A providing for the assumption by the City of Liberty Lake of the Liberty Lake Sewer and Water District No. 1.”* Although the recent court determination will require the City to revise its procedural approach, the assumption option is consistent with the City’s Comprehensive Plan. Upon assumption, the District’s own comprehensive plans will be incorporated into and made a part of the City’s Comprehensive planning processes.